IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 187 of 2005

Between:

Ganji Ramulu, S/o. Narsaiah,
R/o. Siddipet, Medak District.

..... PETITIONER

AND

1 The Commissioner of Prohibition and Excise, Andhra Pradesh,

Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise, Karimnagar,

Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the Order Dated 05-12-2004 in CR.No. 20079/2004/CPE/D4 passed by the 1st Respondent and also the Order Dated 09-09-2004 in CR.No. 578/2003/P &4 Ex/A4 passed by the 2nd Respondent as illegal, arbitrary and without jurisdiction and consequently direct the Respondents to return the Eicher vehicle bearing No. AP 20-T-6372 and 18 Quintals of Black Jaggery in favour of the Petitioner and to pass such other necessary order or orders.

Counsel for the Petitioner: MR.A.PRABHAKAR RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

The vehicle of the petitioner bearing Reg. No. AP 20-T-6372 was seized by the excise officials on 07.09.2003 on the allegation that it was used in transporting 85 bags of black jaggery weighing 52 Kgs. each. Proceedings were initiated against the petitioner before the second respondent. Through order dated 09.09.2004, the second respondent directed confiscation of the vehicle of the petitioner. Aggrieved thereby, he preferred an appeal before the first respondent along with an application for grant of stay. The first respondent passed an order dated 05.12.2004 rejecting the stay. Hence, this writ petition.

Learned counsel for the petitioner submits that the findings recorded by the second respondent are untenable and that the petitioner did not violate any provisions of the A.P. Excise Act, 1968 or the Rules made there under. He submits that the vehicle was released in favour of the petitioner by the second respondent on furnishing bank guarantee and an appeal being continuation of original proceedings, the first respondent ought to have permitted the custody of the vehicle to be with the petitioner.

Learned Government Pleader for Prohibition & Excise, on the other hand, submits that the second respondent recorded categorical findings that the petitioner used the vehicle in transporting contraband goods and even after confiscation, the petitioner cannot be permitted to use the vehicle.

The petitioner availed the statutory remedy of appeal before the first

respondent, aggrieved by the order dated 09.09.2004 passed by the second respondent. The correctness or otherwise of the order passed by the second respondent needs to be considered at the hearing of the appeal. In the meanwhile, the interests of the petitioner on the one hand and the State on the other have to be protected. During the pendency of the proceedings before the second respondent, the custody of the vehicle was given to the petitioner on furnishing bank guarantee for a sum of Rs.1,18,000/-. If the petitioner is forced to part with the custody of the vehicle, virtually the appeal preferred by him becomes infructuous. The interests of the State can be protected by requiring the petitioner to renew the bank guarantee.

Hence, the writ petition is disposed of directing that the custody of the vehicle referred to above shall be with the petitioner, subject to his renewing the bank guarantee for a sum of Rs.1,18,000/- during the pendency of the appeal before the first respondent. There shall be no order as to costs.

18.01.2005

Note:

Furnish CC in two days.

(BO)

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To

1 The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise, Karimnagar, Karimnagar District.

3 Two C.Cs. to the Government Pleader for Prohibition and Excise, High Court Buildings, A.P., Hyderabad, (OUT).

4 Two C.D. Copies.